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IN THE
Supreme Court of the United States

JOHN GEDDES LAWRENCE AND TYRON GARNER
Petitioners,

v.

STATE OF TEXAS,
Respondent.

On Writ of Certiorari to the Court of Appeals of Texas, Fourteenth District

AMICUS BRIEF OF HUMAN RIGHTS CAMPAIGN; NATIONAL GAY & LESBIAN TASK FORCE; PARENTS, FAMILIES & FRIENDS OF LESBIANS & GAYS; NATIONAL CENTER FOR LESBIAN RIGHTS; GAY & LESBIAN ADVOCATES & DEFENDERS; GAY & LESBIAN ALLIANCE AGAINST DEFAMATION; PRIDE AT WORK, AFL-CIO; PEOPLE FOR THE AMERICAN WAY FOUNDATION; ANTI-DEFAMATION LEAGUE; MEXICAN AMERICAN LEGAL DEFENSE & EDUCATION FUND; PUERTO RICAN LEGAL DEFENSE & EDUCATION FUND; SOCIETY OF AMERICAN LAW TEACHERS; SOULFORCE; STONEWALL LAW ASSOCIATION OF GREATER HOUSTON; EQUALITY ALABAMA; EQUALITY FLORIDA; S.A.V.E.; COMMUNITY CENTER OF IDAHO; YOUR FAMILY, FRIENDS & NEIGHBORS; KANSAS UNITY & PRIDE ALLIANCE; LOUISIANA ELECTORATE OF GAYS & LESBIANS; EQUALITY MISSISSIPPI; PROMO; NORTH CAROLINA GAY & LESBIAN ATTORNEYS; CIMARRON FOUNDATION OF OKLAHOMA; SOUTH CAROLINA GAY & LESBIAN PRIDE MOVEMENT; ALLIANCE FOR FULL ACCEPTANCE; GAY & LESBIAN COMMUNITY CENTER OF UTAH; AND EQUALITY VIRGINIA IN SUPPORT OF PETITIONERS

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This amicus brief is submitted in support of petitioners.[1]

INTEREST OF AMICI

Amici include seven national organizations that represent gay men, lesbians, bisexuals and their loved ones, as well as state-level organizations that represent gay people in each of the 13 states where consensual sodomy laws still exist. Amici also include numerous other national organizations with an interest in combating invidious discrimination of all kinds.[2] Amici collectively represent both the millions of gay Americans affected by laws of the kind challenged here, and the millions more who agree that sodomy laws reflect a condemnation of gay people that is inconsistent with the most basic principles upon which our government is founded.

SUMMARY OF ARGUMENT

Both the Equal Protection Clause and the Due Process Clause bar states from imposing disabilities on persons for illegitimate purposes. This Court has long recognized that targeting a class of people for no reason other than animus toward the class is not a legitimate purpose of government – especially where criminal sanctions are involved. Texas' Homosexual Conduct Law reflects just such a purpose. It exists not to condemn a particular act, but only to condemn the act when performed by particular persons, i.e., those who are physically and emotionally attracted to members of the same sex. It is backed by a tradition not of morality, but of animus, ignorance, and stereotype, and it builds upon that tradition by branding all gay people as criminal deviants, worthy only of contempt and censure rather than basic respect and equal treatment. In the too recent past, much of

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[1] Letters of consent have been filed with the Clerk. No counsel for a party authored this brief in whole or in part, and no person or entity other than amici or their counsel made a monetary contribution to this brief.

[2] The amici organizations are identified and described individually in the appendix to this brief.

society thought such condemnation justified because of a perceived pathology of homosexuality. In truth, it is utterly inconsistent with everything we now know about the lives of gay people as individuals, family, friends, co-workers, and leaders of the community. Most of our social and legal institutions have transformed themselves – or are well along the road – to reflect the increasingly widespread recognition of the essential humanity of gay people. Sodomy laws serve no function today other than to reinforce the vestiges of a noxious history of discrimination, a cruel purpose that no proper vision of our Constitution could sustain.

ARGUMENT

This case raises the twin questions whether Texas' Homosexual Conduct Law violates the Equal Protection Clause or the Due Process Clause of the Fourteenth Amendment. We believe the answer to both questions is yes. We think it manifestly clear that Texas' sodomy law infringes on a fundamental right shared by the entire community – the right to be free from governmental intrusion into, and criminalization of, private sexual relations between consenting adults. Although the Court can and should decide the case on that basis, in this brief we explain why Texas' law must be invalidated regardless of whether the law infringes fundamental privacy and liberty interests. Texas' Homosexual Conduct Law violates both equal protection and due process because its solitary purpose is constitutionally illegitimate and irrational: to punish and brand as criminals a class of citizens defined by their emotional and physical attraction to members of the same sex as themselves.

This Court's equal protection cases have long established that even when a law targets for differential treatment a class that is not "suspect" for purposes of equal protection review, the law is invalid unless it ""bear[s] a rational relation to some legitimate end."" *Vacco v. Quill*, 521 U.S. 793, 799 (1997) (quoting *Romer v. Evans*, 517 U.S. 620, 631 (1996)).

Similarly, this Court's due process precedents have made clear that even when a law does not infringe upon any "fundamental liberty interest," the law is invalid if it is not "rationally related to legitimate government interests." *Washington v. Glucksberg*, 521 U.S. 702, 728 (1997). As we elaborate in this brief, Texas' Homosexual Conduct Law does not serve any purpose that is legitimate for a government of *all* the people. Texas' law is not a product of general anti-sodomy ecclesiastical traditions – which broadly condemned non-procreative sexual acts in which anyone might engage – but of a uniquely 20th century effort to root out gay people and alienate them from the community. This Court has long understood that a state may not treat what is "intrinsically the same quality of [criminal] offense" differently for different classes of citizens, *see McLaughlin v. Florida*, 379 U.S. 184, 194 (1964) (invalidating law criminalizing unmarried cohabitation for interracial couples but not for same-race couples), and that such differentiation in *criminal* laws works an especially serious constitutional harm, *id.* at 192. That is what we face here. By singling out for criminalization private, consensual sexual acts *only* when they are committed by members of the same sex, Texas legally defines the emotional and sexual identity of a substantial segment of our society as criminally deviant, branding the entire class not only as inferior, but as a danger to the community that must be deterred, punished, and excluded.

In short, Texas' law proscribes homosexual sodomy simply "to make [gay people] unequal to everyone else," *Romer*, 517 U.S. at 635, tarring and branding them as "criminal" simply out of moral aversion by some to their homosexuality. Because there is no legitimate government interest in a criminal law that exists only to condemn a class of disfavored citizens, *see Department of Agriculture v. Moreno*, 413 U.S. 528, 534 (1973) ("a bare . . . desire to harm a politically unpopular group cannot constitute a *legitimate* gov-

ernmental interest"), the Texas law violates even minimum constitutional standards of equal protection and due process.

I. TEXAS' HOMOSEXUAL CONDUCT LAW IS A PRODUCT OF ANTI-GAY ANIMUS

Texas' Homosexual Conduct Law, limited to same-sex intimacy, was enacted in 1973. It is not a statute woven from the fabric of the common law, reflecting an "ancient" anti-sodomy morality. It grows from a different, more recent tradition: one of anti-gay animus and bigotry.[3] That is, the law impermissibly subjects a class of persons to criminal sanction merely because of "animosity toward the class of persons affected." *Romer*, 517 U.S. at 634.

A. Ancient Sodomy Proscriptions Did Not Single Out Same-Sex Sodomy For Condemnation

It is a common misperception that gay people have always been singled out and their sexual relations specially criminalized. In fact, it is only relatively recently that sodomy has been proscribed solely between people of the same sex. Before the concept of a unique "homosexual identity" gained currency in the late nineteenth century, "illicit sexual acts between men were not seen as fundamentally different from, or necessarily worse than, illicit acts between a man and a woman."[4]

What offended traditional notions of morality, as re-

[3] To be clear: we do not believe any moral tradition justifies anti-sodomy laws of any kind, whether general or same-sex only. In our view all such laws infringe upon the fundamental right of all adults to engage in private, consensual acts of sexual intimacy. But even if the Court does not recognize such a right, we submit that today's sodomy laws, and especially same-sex-only sodomy laws, are still invalid because they exist *not* to impose a moral code of conduct on the private behavior of *all* persons, but to condemn and ostracize gay people specifically.

[4] Goldstein, Comment, *History, Homosexuality, and Political Values: Searching for the Hidden Determinants of* Bowers v. Hardwick, 97 Yale L. J. 1073, 1088 (1988).

flected in English and early American common law, were a range of nonprocreative sexual practices. Because nonprocreation was the central offense, those practices were criminalized by early sodomy laws regardless of whether they were engaged in by same-sex or different-sex couples.[5] Most of today's sodomy laws continue to reflect this traditional disapproval of nonprocreative sexual activities regardless of the sexual identity of the couple involved. Of the thirteen states that continue to outlaw private consensual sodomy, nine apply their bans to all couples.[6] Only four states, including Texas, punish solely same-sex conduct.[7]

Sodomy proscriptions limited to same-sex relations are thus a distinctly modern phenomenon. The first Texas sodomy law enacted in 1860, for instance, prohibited anal sex whether committed by husband and wife, unmarried heterosexuals, or two male partners. Tex. Penal Code art. 342 (1860). In 1943, the state added a proscription of oral sex, but still without reference to the sexual identity of the part-

[5] *See* D'Emilio & Freedman, Intimate Matters: A History of Sexuality in America 16, 35 (1988); Eskridge, *Law and the Construction of the Closet: American Regulation of Same-Sex Intimacy, 1880-1946*, 82 Iowa L. Rev. 1007, 1012-13 (1997).

[6] *See* Ala. Code §§ 13A-6-60(2), 13A-6-65(a)(3) (1 year prison term); Fla. Stat. § 800.02 (60 days); Idaho Code § 18-6605 (5 years to life); La. Rev. Stat. § 14:89 (5 years); Miss. Code. Ann. § 97-29-59 (10 years); N.C. Gen. Stat. § 14-177 (3 years); S.C. Code Ann. § 16-15-120 (5 years); Utah Code Ann. § 76-5-403(1) (6 months); Va. Code Ann. § 18.2-361(A) (5 years). The Commonwealth of Puerto Rico also has a sodomy law, which makes oral and anal sex a crime for everyone, but all sexual intimacy (including touching or arguably even kissing) a crime for gay people only. P.R. Penal Code Art. 103 (6-12 years).

[7] *See* Kan. Stat. Ann. § 21-3505(a)(1) (6 month prison term); Mo. Rev. Stat. § 566.090 (1 year) (*but see State v. Cogshell*, 997 S.W.2d 534, 537 (Mo. Ct. App. 1999) (interpreting statute to apply only to non-consensual activity)); Okla. Stat. tit. 21 § 886 (10 years) (generally applicable statute construed by *Post v. State*, 715 P.2d 1105, 1110 (Okla. Crim. App. 1986) not to cover heterosexual consensual behavior); Tex. Penal Code Ann. § 21.06 (monetary penalty).

ners. Tex. Penal Code art. 524 (1943). It was not until 1973 that Texas repealed its general prohibition on sodomy and enacted the Homosexual Conduct Law in its place, specifically criminalizing consensual relations only between people of the same sex. Tex. Penal Code § 21.06.

B. The Modern Criminalization Of Homosexual Sodomy Reflects Modern Patterns Of Discrimination Against Gay People As A Class

There is, then, no ancient tradition of same-sex sodomy proscriptions that explains Texas' Homosexual Conduct Law. The explanation lies elsewhere: simple animus, not against sodomy generally, but against individuals physically and emotionally attracted to members of the same sex.

Although same-sex relationships have been documented throughout history, the concept of homosexuality (or heterosexuality) as a defining characteristic of one's identity is relatively recent. American "colonial society lacked even the category of homosexual or lesbian to describe a person," though colonial court records refer to incidents of sexual acts between two women or two men. D'Emilio, *Capitalism and Gay Identity*, *in* Cases and Materials on Sexual Orientation and the Law 46, 47 (Rubenstein ed., 2d ed. 1993). It was only in the late 19th century that American scientific literature began describing homosexuality as a pathological "condition, something that was inherent in a person, a part of his or her 'nature.'" *Id.* at 29.

The turn of the 20th century saw the rise of numerous forms of public attacks on gay people. Police targeted for arrest people perceived to be gay and raided institutions that served a predominately gay clientele.[8] Gay-themed plays

[8] *See* Chauncey, Gay New York 138-39 (1994).

and films were censored[9] and books were banned.[10] In Europe, discrimination against gay people reached a horrific apogee in World War II, when thousands were exterminated in Nazi concentration camps.[11] After the war, discrimination against gay men and lesbians took its most virulent American forms. Led by Joseph McCarthy, who grouped homosexuality with communism as a "grave evil to be rooted out of the federal government,"[12] the U.S. Senate conducted a special investigation into government employment of gay people and "other sex perverts."[13] In 1953, President Eisenhower terminated all gay people from federal employment, and the FBI sought to enforce the order by gathering data on local arrests for gay-related charges and membership in gay and lesbian civil rights organizations.[14] Gay aliens were excluded from admission into the United States as psychopaths or sexual deviants.[15]

[9] *See* Curtin, We Can Always Call Them Bulgarians: The Emergence of Lesbians and Gay Men on the American Stage (1987); Russo, The Celluloid Closet: Homosexuality in the Movies (1991).

[10] *See* Cain, *Litigating for Lesbian and Gay Rights: A Legal History*, 79 Va. L. Rev. 1551, 1557 (1993).

[11] *See, e.g.*, Haeberle, *Swastika, Pink Triangle, and Yellow Star: The Destruction of Sexology and the Persecution of Homosexuals in Nazi Germany*, *in* Hidden from History: Reclaiming the Gay and Lesbian Past (Duberman et al. eds., 1989).

[12] *Developments in the Law – Sexual Orientation and the Law*, 102 Harv. L. Rev. 1508, 1556 (1989).

[13] S. Rep. No. 241 (1950). The investigation concluded that gay people were unfit for employment because they "lack the emotional stability of normal persons" and threaten to "pollute" government offices. *Id.* at 3-5.

[14] *See* D'Emilio, Sexual Politics, Sexual Communities: The Making of a Homosexual Minority in the United States, 1940-1970 (1983); Johnson, *Homosexual Citizens: Washington's Gay Community Confronts the Civil Service*, Washington History (Fall/Winter 1994-95), at 44.

[15] Rich, Note, *Sexual Orientation Discrimination in the Wake of* Bowers v. Hardwick, 22 Ga. L. Rev. 773, 773 n.4 (1988); *see Boutilier v.*

States and municipalities also waged anti-gay campaigns. States enacted laws authorizing forced psychiatric examinations of persons convicted of sodomy or suspected of being "sexual deviants," and confinement of those deemed in need of a "cure" for their homosexuality.[16] An Alabama law "reform" commission announced that gay people are "persons with abnormal tendencies" who "have forfeited certain of their standings," and warned that Alabama would make itself "known as a place where it is tough for [such] persons."[17] Other states and local governments took steps to expose and exile gay people, including through commitment to the gruesome asylums of the day.[18]

So long as most gay people assumed that they had to hide their sexual orientation, official discrimination typically took the form of exposure and harassment. As gay people have increasingly refused to hide their orientation over the last forty years, discrimination has become more targeted. For example, Lambda Legal Defense and Education Fund, the first gay legal organization, was able to incorporate only by obtaining an injunction, *see In re Thom*, 301 N.E.2d 542 (N.Y. 1973), and other gay advocacy groups were not even that fortunate, *see State ex rel. Grant v. Brown*, 313 N.E.2d

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INS, 387 U.S. 118, 124 (1967) ("Congress commanded that homosexuals not be allowed to enter. The petitioner was found to have that characteristic and was ordered deported.").

[16] *See, e.g.*, Garland, *The Low Road to Violence: Governmental Discrimination as a Catalyst for Pandemic Hate Crime*, 10 Law & Sex. 1, 75-76 & nn.355-65 (2001).

[17] Commission to Study Sex Offenses: Interim Report to the Alabama Legislature, June 12, 1967, at 5.

[18] *See, e.g.*, Garland, *supra* note 16; D'Emilio, *supra* note 14; Katz, Gay American History: Lesbians and Gay Men in the U.S.A. (1976); Chauncey, *The Postwar Sex Crime Panic*, *in* True Stories from the American Past (1993); Freedman, *"Uncontrolled Desires": The Response to the Sexual Psychopath, 1920-1960*, *in* Passion and Power: Sexuality in History (1989).

847 (Ohio 1974).[19] Gay men and lesbians routinely lost jobs, housing, and custody of their children based solely on their sexual orientation.[20] The law in many places continued to treat gay people as if they were unstable or mentally ill, even after the major American psychological and psychiatric societies rejected that notion.[21]

No credible authority disputes that gay people have been subjected to the most dehumanizing forms of discrimination employed by American government at any level in the 20th century.[22] It is in this ugly tradition that Texas' Homosexual Conduct Law follows: the modern practice of condemning gay people for who they are, as opposed to the more ancient tradition condemning acts in which anyone can engage.

C. Homosexual Sodomy Laws Harm All Gay People

Modern sodomy laws are intended to reinforce society's condemnation not of oral and anal sodomy, but of those who find themselves emotionally and sexually attracted to members of the same sex. "'After all, there can hardly be more palpable discrimination against a class than making the conduct that defines the class criminal.'" *Romer*, 517 U.S. at 641 (Scalia, J., dissenting) (quoting *Padula v. Webster*, 822

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[19] *See also* Cain, Rainbow Rights: The Role of Lawyers and Courts in the Lesbian and Gay Civil Rights Movement 59-61 (2000) (difficulties of gay charitable organizations in obtaining tax-exempt status).

[20] *See, e.g.*, Wolfson, *Civil Rights, Human Rights, Gay Rights: Minorities and the Humanity of the Different*, 14 Harv. J. L. & Pub. Pol'y 21, 30-33 (1991) (collecting examples).

[21] *See* Herek, *Myths About Sexual Orientation: A Lawyer's Guide to Social Science Research*, 1 Law & Sex. 133, 142-43 (1991).

[22] In our view, the kind of governmental and private discrimination gay people have suffered, along with the political disempowerment such discrimination has caused, entitles gay men and lesbians to protection as a suspect or at least quasi-suspect class. We also believe that Texas' Homosexual Conduct Law could not survive whatever kind of heightened scrutiny such a designation would entail. As we elaborate here, however, the Court need not adopt that position for petitioners to prevail.

F.2d 97, 103 (D.C. Cir. 1987)). Indeed, as discussed below, sodomy laws are most commonly used by states *not* to punish particular persons for having engaged in proscribed acts, but to impose legal disabilities on persons who can be identified as "homosexual" without regard to any proof that they have engaged in the proscribed conduct. In other words, the primary function of sodomy laws today is to brand gay people as "criminals," a brand that itself works to inflict a variety of psychological and legal harms.

The branding effect explains why sodomy laws remain so harmful even though most are rarely enforced. In this case, of course, Texas' law *was* enforced, and gay people in Texas, at least, can take no comfort in a "history of nonenforcement." *Bowers v. Hardwick*, 478 U.S. 186, 198 n.2 (1986) (Powell, J., concurring). But serious harms flow even from a rarely-enforced law that exists to create a "criminal class whose members are treated as felons." Leslie, *Creating Criminals: The Injuries Inflicted by "Unenforced" Sodomy Laws*, 35 Harv. C.R.-C.L. Rev. 103, 104 (2000). In states like Texas, to be gay is to be a criminal – a truth underscored by the fact that Texas law treats an "allegation" of homosexuality as slander per se. *See Head v. Newton*, 596 S.W.2d 209, 210 (Tex. Civ. App. 1980) (calling another person gay is slanderous per se because of implication that he or she has violated criminal law). With or without prosecution, that classification by itself brings severe and far-reaching consequences for gay men and lesbians.

1. One of the most powerful effects of Texas' law, and laws like it, is on the mental and emotional well-being of those in the condemned class. Studies confirm that sexual expression is a vital component of personal psychological health for most human beings.[23] For both heterosexual and

[23] Laumann et al., The Social Organization of Sexuality: Sexual Practices in the United States 360 (1994) (national study by University of Chicago finding persons who have sexual experiences report higher levels of happiness than do those who have no sexual experiences); Masters

homosexual adults, it is essential to healthy intimate relationships.[24] To the extent the sodomy laws deter gay people in loving unions from expressing their love physically, adverse psychological consequences are inevitable.

But sodomy laws also injure gay people who are not actually deterred from physical relations. "Sodomy laws are kept on the books, even though state governments do not intend to actively enforce them, because the laws send a message to society that homosexuality is unacceptable." Leslie, *supra*, at 114. Put more bluntly, such laws exist to "tell[] gays they are scum." Mohr, *Mr. Justice Douglas at Sodom: Gays and Privacy*, 18 Colum. Hum. Rts. L. Rev. 43, 53 (1986). That kind of message has its intended effect: some gay people internalize the message that they are inferior, resulting in self-loathing and associated emotional dysfunctions. Br. of Am. Psychological Ass'n & Am. Psychiatric Ass'n, *Romer v. Evans* (No. 94-1039), at 24-26.[25] Sodomy laws also generate "fear of arrest, loss of jobs, discovery, etc.," thus causing "severe mental health problems." *Baker v. Wade*, 553 F. Supp. 1121, 1130 (N.D. Tex. 1982), *rev'd*, 769 F.2d 289 (5th Cir. 1985). And sodomy laws inhibit gay people from "coming out" to friends and family, an act critical to the emotional health of many gay people.[26]

& Johnson, Human Sexual Inadequacy (1970); Gonsiorek & Rudolph, *Homosexual Identity: Coming Out and Other Developmental Events*, *in* Homosexuality: Research Implications for Public Policy 161-76 (Gonsiorek & Weinrich eds. 1991).

[24] *See, e.g.*, Schwartz & Blumstein, American Couples 193, 201, 205-06 (1983); McWhirter & Mattison, The Male Couple: How Relationships Develop 262 (1984).

[25] *See also* D'Augelli, *Developmental Implications of Victimization of Lesbian, Gay, and Bisexual Youth*, *in* Stigma and Sexual Orientation: Understanding Prejudice Against Lesbians, Gay Men, and Bisexuals 187, 191 (Herek ed. 1998) (describing the psychological consequences of stigmatization on gay, lesbian, and bisexual youth).

[26] *See, e.g.*, Hammersmith & Weinberg, *Homosexual Identity: Commitment, Adjustment and Significant Others*, 36 Sociometry 56, 78

2. Sodomy laws have legal consequences on gay men and lesbians beyond the uncertain threat of jail or other criminal sanction for their private sexual conduct. Labeling gay people "criminal" facilitates the imposition of a variety of legal disabilities "because the law permits differential treatment of criminals." Leslie, *supra*, at 115. The criminality of same-sex sodomy in Texas has been invoked by those seeking to close the public library to gay groups,[27] deny permanent residence to gay immigrants,[28] prohibit gay men and lesbians from fostering or adopting children,[29] ban gay and lesbian student groups on college campuses,[30] oppose protection of gay people from discrimination in employment,[31] and deny gay and lesbian Texans protection under proposed hate crime laws.[32] Many of amici have direct experience elsewhere with similar reliance on sodomy laws to support anti-gay policy positions – sometimes successfully –

(1973) ("having . . . 'settled into' a homosexual identity . . . leads to better psychological adjustment as indicated by a more stable, positive self-image, fewer anxiety symptoms, and less depression"); Leserman et al., *Gay Identification and Psychological Health in HIV-Positive and HIV-Negative Gay Men*, 24 J. Applied Soc. Psychology 2193, 2205 (1994) ("better psychological health [is] related to gay self-acceptance, participating in gay organizations and groups, socializing with other gay men, and parental disclosure and acceptance of being gay").

[27] *See* Associated Press, *Gay Rights Supporters' Meeting Site Draws Protest*, Dallas Morning News, Jan. 15, 1996, at 8D.

[28] *See, e.g., In re Naturalization of Longstaff*, 538 F. Supp. 589, 590-92 (N.D. Tex. 1982), *aff'd*, 716 F.2d 1439 (5th Cir. 1983).

[29] *See* Hughes, *Bill Would Ban Gay Texans From Adopting Children*, Houston Chron., Dec. 11, 1998, at A38.

[30] *See* Tomaso, *Stephen F. Austin Senate Bans Gay Group*, Dallas Morning News, Nov. 2, 1994, at 1A; *see also Gay Student Servs. v. Texas A&M Univ.*, 737 F.2d 1317, 1320 n.4 (5th Cir. 1984).

[31] *See* Richardson, *Gay Rights Effort Likely to Be Tabled*, Ft. Worth Star-Telegram, Jan. 19, 1999, at 1.

[32] *See* Griest, *Hate Crimes Act Named for Byrd Heads for House*, Austin Am. Statesman, Mar. 12, 1999, at B10.

on the theory that gay people are necessarily criminals because of such laws. *See* App. 1a, 7a-13a. Sodomy laws are used routinely in civil litigation to disadvantage gay people who have never been charged or convicted of any crime. *See* Hassel, *The Use of Criminal Sodomy Laws in Civil Litigation*, 79 Tex. L. Rev. 813, 813-14 (2001). In the course of determining custody, for instance, some courts have relied on sodomy laws to conclude that gay men and lesbians are unfit parents simply because they can be presumed to be criminals.[33] Similarly, sodomy laws have been used in court as a basis for denying public employment to gay people.[34] One trial court refused to enforce an otherwise valid buy-sell agreement between two lesbians because the subject of the contract was their home, in which they likely committed criminal acts of sodomy. *See Crooke v. Gilden*, 414 S.E.2d 645 (Ga. 1992) (reversing trial court order). Just this week, a key Virginia legislator suggested that a gay person's violations of a sodomy law could disqualify her from being a state judge.[35]

3. Finally, the Homosexual Conduct Law and its counterparts in other states contribute to an atmosphere of hatred

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[33] *See, e.g., Ex parte D.W.W.*, 717 So.2d 793, 796 (Ala. 1998) (upholding restrictions on lesbian mother's visitation rights in part because "the conduct inherent in lesbianism is illegal in Alabama"); *Bottoms v. Bottoms*, 457 S.E.2d 102, 108 (Va. 1995) (although "a lesbian mother is not *per se* an unfit parent . . . [c]onduct inherent in lesbianism is punishable as a Class 6 felony in the Commonwealth . . . ; thus, that conduct is another important consideration in determining custody").

[34] *See* Hassel, *supra*, at 836-38; *Childers v. Dallas Police Dep't*, 513 F. Supp. 134, 142 n.13 (N.D. Tex. 1981) ("The overriding reason that the Plaintiff was not hired [as a storekeeper for the property storeroom of the Dallas Police Department] was because he admitted to engaging in homosexual conduct prohibited by Texas penal statutes."); *Shahar v. Bowers*, 114 F.3d 1097, 1105 n.17 (11th Cir. 1997) (en banc) (noting Georgia argument that lesbian employee should be presumed to be lawbreaker).

[35] Scanlon & Halladay, *Sex Life May Be Used Against Judges*, Daily Press, Jan. 15, 2003.

and violence that puts gay people, and those perceived to be gay, at risk.[36] Despite significant progress in recent years, *see infra* Section II.B., gay men and lesbians continue to be disproportionately targeted for hate-related intimidation and violence.[37] The current data in Texas are illustrative. In Dallas, over a five-year period, there were about three race-related hate crimes reported for every 100,000 people of color in the population, and roughly 11 hate crimes based on sexual orientation reported for every 100,000 gay people. Gay people in Dallas are about four times more likely to be the victim of a hate crime than are all non-gay people. A gay person in Houston is about 9 times more likely than a non-gay person to be the victim of a hate crime.[38] Gay and lesbian youth routinely are tormented with epithets, bullied, and even attacked by their peers,[39] often with severe conse-

[36] *See* Herek, *The Context of Anti-Gay Violence: Notes on Cultural and Psychological Heterosexism*, 5 J. Interpers. Violence 316 (1990) (discussing connection between social stigmatization of gay people and anti-gay violence); Garland, *supra* note 16 (discussing connection between government discrimination against gay people and other groups and private violence against such groups).

[37] According to the FBI, in 1995 and 2000 anti-gay hate crimes were the third most prevalent form of bias crime, after hate crimes motivated by racism or religious prejudice. U.S. Dept. of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division, *Uniform Crime Reports, Hate Crime Statistics, 1995-2000*.

[38] Rubenstein, An Empirical Analysis of Hate-Crimes Against Gay People in the United States, 1990-2000 (forthcoming 2003) (analyzing FBI data).

[39] One recent study concluded that gay, lesbian, and bisexual teens report "significantly greater exposure to violence" than their peers, are three times as likely to miss school because they feel unsafe, and are twice as likely to have been injured or threatened with a weapon at school. Faulkner & Cranston, *Correlates of Same-Sex Sexual Behavior in a Random Sample of Massachusetts High School Students*, 88 Am. J. Pub. Health 262, 263-64 (1998); *see also* Phillips & Baker, PFLAG, Safe Schools Study (September 6, 2002).

quences for their physical and mental health.[40]

Sodomy laws "create the milieu that informs society . . . that the lives of gay people are not worthy." Leslie, *supra*, at 122. Sodomy laws facilitate violence against gay people by allowing its perpetrators to "rationalize their violence as vigilante enforcement of sodomy laws." *Id.* at 124. Such laws also deter victims of bias-motivated crimes from reporting those crimes to the police, leading to a lower risk of arrest and still more bias-motivated violence. *Id.* at 125.

Despite great advances in recent years toward legal and social equality for gay people, *see infra* section II.B., sodomy laws remain a tangible vestige of a not-yet-bygone era of animus and stereotype – an era that clings in part because of the collateral ways these laws maintain and reinforce the subjugation of all gay people. Though rooted in what is now a fading bigotry, these laws still stand as a substantial barrier to full and equal citizenship for gay citizens.

II. THERE IS NO LEGITIMATE JUSTIFICATION FOR BRANDING HOMOSEXUALS AS CRIMINALLY DEVIANT

Enforcing moral condemnation of gay people as a class by criminalizing the conduct that defines the class serves no legitimate state purpose. By now, all but the obtuse and the unkind recognize that persons who are physically and emotionally attracted to members of the same sex are not less productive – or more dangerous – members of the community by mere dint of their sexual orientation. Any suggestion that sodomy laws are rational because gay people *should* be branded as criminals is indefensible. Indeed, in view of the great social and legal progress made in recent years toward

[40] D'Augelli, *supra* note 25, at 189-91; Remafedi, *The Relationship Between Suicide Risk and Sexual Orientation: Results of a Population-Based Study*, 88 Am. J. Pub. Health 57 (1998) (homosexual and bisexual teenagers are at greater risk of suicide than other teens).

recognizing the essential humanity of gay men and lesbians, sodomy laws now persist only as cruel anachronisms in a small number of jurisdictions unwilling – or unable, given the inertial forces affecting most legislative change – to rid themselves of the vestiges of class-based animus and bigotry.

A. Homosexual Sodomy Laws Brand As Criminally Deviant Millions Of Productive Citizens

Laws that brand gay people as criminally deviant do not operate on some abstract "class." They harm real men and women – men and women who live in towns and cities across the United States, who live with long-term domestic partners in committed relationships, who raise children, who serve their country in the military and in the government. Even the most cursory snapshot of the gay community is enough to demonstrate the irrationality of laws that assign the label "criminal" to all gay citizens.[41]

There are approximately six million openly gay men and women in the United States,[42] and 450,000 gay men and lesbians in Texas. Census data show same-sex couples living across the entire country, in 99.3 percent of all counties in the United States.[43] Gay couples live in 252 of Texas' 255

[41] Unless another source is identified, the following demographic portrait is drawn from empirical analyses of the 1990 and 2000 Census data conducted by the Williams Project at the UCLA Law School. This work is available at www1.law.ucla.edu/~erg/xgaydata.html.

[42] The most widely accepted study of sexual practices in the United States is the National Health and Social Life Survey (NHSLS). The NHSLS found that 2.8% of the male, and 1.4% of the female, population identify themselves as gay, lesbian, or bisexual. *See* Laumann et al., The Social Organization of Sex: Sexual Practices in the United States (1994). This amounts to nearly 4 million openly gay men and 2 million women who identify as lesbian.

[43] Smith & Gates, Human Rights Campaign, Gay and Lesbian Families in the United States: Same-Sex Unmarried Partner Households - A Preliminary Analysis of 2000 United States Census Data 2 (2001). The Census Bureau does not ask people their sexual orientation, but through its questions about household composition, it does collect data about households with same-sex partners. It has been estimated, however, that only about one third of same-sex couples identify themselves as such to census-takers. *See* Black et al., *Demographics of Gay and Lesbian Population in the United States: Evidence from Available Systematic Data Sources*, 37 Demography 150 (2000).

counties, including numerous small or rural counties. Gay couples nationally are about as likely to live in metropolitan areas as other couples: about 24 percent of the gay couples identified by the 2000 Census live in ten metropolitan areas; for the population at large, that figure is about 20 percent.

Same-sex couples are "similar in racial makeup to the population as a whole."[44] According to 1990 Census data, whites comprised about 76 percent of the total adult population, and about 77 percent of the adult population living in same-sex couples. About nine percent of all individuals living in same-sex relationships were Black, as compared with about 11 percent of the total adult population. Between six and seven percent of the total adult population was Hispanic, and a similar proportion was Asian; roughly the same percentages were reported among same-sex couples.[45]

Gay men and lesbians also tend to live in committed relationships. The 2000 Census data count 1.2 million gay people living as couples, but that number reflects a significant undercounting of the actual number of gay couples. If the 2000 undercount of gay couples is as significant as the best estimates of the 1990 Census undercount calculate, *see supra* note 43, it would mean that as many as 60 percent of all gay people live in couples,[46] compared to approximately 57 per-

[44] Black et al., *supra* note 42, at 150.

[45] Full 2000 Census data has not been released, but one study of significant preliminary 2000 data indicates that gay couples continue to reflect roughly the same racial makeup as the overall population. *See* Cahill et al., NGLTF Policy Inst., Family Policy: Issues Affecting Gay, Lesbian, Bisexual and Transgender Families 11 (2002).

[46] *See also* Vetri, *Almost Everything You Wanted to Know About Lesbians and Gay Men, Their Families, and the Law*, 26 S.U. L. Rev. 1

cent for the overall adult population. Even if the 2000 undercount is less significant, it is at least clear that most gay people, like most non-gay people, aspire to live in committed, loving relationships and seek a strong sense of family in their lives.[47] In Texas alone, even unadjusted census figures report 86,000 gay people living with same-sex partners.

Many gay men and lesbians raise children in their homes. Some are parents of children from prior marriages; others have become parents since entering into committed relationships with same-sex partners.[48] The Census suggests that 13 percent of same-sex couples have children living in their homes; more targeted studies show that approximately 28 percent of lesbians and 14 percent of gay men are raising children in their households.[49] The available evidence indicates that literally millions of children have a least one gay parent,[50] and "[s]ignificant sociological and psychological studies . . . have demonstrated that children raised by gay or lesbian parents are as emotionally well adjusted as children raised in heterosexual households," Vetri, *supra* note 46, at 81 (citing numerous studies).

Gay men and lesbians serve their country in both civilian and military capacities. There are three openly gay members of Congress (two Democrats and one Republican) and 42

(1998) (discussing higher estimates); Herek, Myths About Sexual Orientation, *supra*, at 161-62 (citing surveys of gay men and lesbians reporting that 60% of gay men and 64% of lesbians live in committed relationships).

[47] Carrington, No Place Like Home: Relationships and Family Life among Lesbians and Gay Men (1999); Peplau, *Lesbian and Gay Relationships* (1993), *in* Psychological Perspectives on Lesbian & Gay Male Experiences (Garnets & Kimmel eds. 1999).

[48] *See* Vetri, *supra* note 46, at 80-82.

[49] *See* Black, *supra* note 43, at 150.

[50] American Academy of Pediatrics, *Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 Pediatrics 341 (2002).

openly gay legislators in 20 different states.[51] Gay men and lesbians serve the current Administration in positions ranging from ambassador to arms control advisor to Environmental Protection Agency official.[52] And gay men and lesbians are generally as likely to have served in the military as non-gay Americans[53] – a service record made more remarkable by the fact that gay service-members must negotiate the military's long-standing regulations regarding homosexuality. *See* 10 U.S.C. § 654 (1995).

Finally, this Court's own cases reflect the diversity of the gay community in America. In the past two decades, the Court has heard cases involving a variety of lesbians and gay men – school teachers from Oklahoma,[54] a bartender from Georgia,[55] a "covert electronics technician" at the CIA,[56] "descendants of the Irish immigrants" from Boston,[57] a diverse group of Colorado citizens, "some of them government employees,"[58] an "exemplary" New Jersey Eagle Scout,[59] and now two gay men – one black, one white – from Texas. This range of litigants alone suggests the diversity of the gay community and of the lives led by gay citizens.

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[51] Frontlines, *News From The Gay & Lesbian Victory Fund* 1 (Postelection 2002).

[52] Epstein, *Bush's Gay Nominees Draw Little Opposition*, San Francisco Chron., Dec. 29, 2002, at A1.

[53] The 1990 Census found that about 17 percent of the adult population overall had some military experience, while about 14 percent of those in same-sex couples did. In Texas, the percentages were 16.43 for the general population and 15.14 for those in same-sex couples.

[54] *Board of Educ. of Oklahoma City v. National Gay Task Force*, 470 U.S. 903 (1985).

[55] *Bowers v. Hardwick*, 478 U.S. 186 (1986).

[56] *Webster v. Doe*, 486 U.S. 592, 594 (1988).

[57] *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston*, 515 U.S. 557, 561 (1995).

[58] *Romer v. Evans*, 517 U.S. 620, 625 (1996).

[59] *Boy Scouts of America v. Dale*, 530 U.S. 640, 644 (2000).

These are the people branded as criminals by laws like Texas' Homosexual Conduct Law. Another is Mark Bingham, who on September 11, 2001, called his mother from United Airlines Flight 93 and then helped to save countless American lives by fighting against the terrorists aboard his plane.[60] To his country, Mr. Bingham is a hero; in Texas, he is a criminal. On the same day that Mr. Bingham died, the Reverend Mychal F. Judge, chaplain to the New York City Fire Department and also gay, was killed by falling debris in the lobby of the World Trade Center shortly after administering last rites to a dying firefighter.[61] Congress memorialized Father Judge and his bravery with the Mychal Judge Police and Fire Chaplains Public Safety Officers' Benefit Act, which allows public safety officers killed in the line of duty to have federal benefits flow to same-sex partners. Pub. L. No. 107-196, 116 Stat. 719 (June 24, 2002).

There is nothing about gay men and women in America that justifies treating them as criminally deviant under laws like Texas' Homosexual Conduct Law. Gay men and lesbians are partners and parents, neighbors and coworkers, occasional heroes. There is no legitimate and rational basis for singling out this group for branding as criminal.

B. Homosexual Sodomy Laws – Not Gay People – Are The Real Social And Legal Deviants

As demonstrated above, Western legal and religious tradition did not single out homosexual sodomy for condemnation. To the extent that homosexual sodomy laws arise from the different and more modern tradition of condemning gay people, it is a tradition that has otherwise receded in recent years in most of our own public and private institutions. The

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[60] Nieves, *Passenger on Jet: Gay Hero or Hero Who Was Gay?*, N.Y. Times, Jan. 16, 2002, at A12.

[61] Wakin, *Killed on 9/11, Fire Chaplain Becomes Larger Than Life*, N.Y. Times, Sept. 27, 2002, at A1.

United States is alone among modern Western democracies in outlawing same-sex relations in any substantial part of the country.[62] Even in this country, homosexual sodomy laws have become the last gasp of a few recalcitrant jurisdictions, as the larger society has repudiated not only the condemnation but also many of its vestiges.

1. Public policy toward gay men and lesbians has changed dramatically over the past few decades. As recently as 1986, when this Court last addressed the issue, 24 States and the District of Columbia had criminal sodomy laws on their books. *See Bowers*, 478 U.S. at 194. Since then, half those jurisdictions have repealed their sodomy laws or invalidated them under their state constitutions, so that today 37 states and the District of Columbia do not criminalize any form of adult, consensual sodomy.[63] As we have seen, only thirteen states outlaw sodomy at all, and only four of those single out same-sex conduct. *See supra* at 5.

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[62] Wilets, *Using International Law to Vindicate the Civil Rights of Gays and Lesbians in United States Courts*, 27 Colum. Hum. Rts. L. Rev. 33, 34 (1995).

[63] Repeal or invalidation of same-sex-only sodomy laws since *Bowers*: 1993 Nev. Stat. 236 (repealing Nev. Rev. Stat. § 201.193); *Jegley v. Picado*, 80 S.W.3d 332 (Ark. 2002); *Kentucky v. Wasson*, 842 S.W.2d 487 (Ky. 1993); *Gryzcan v. Montana*, 942 P.2d 112 (Mont. 1997); *Campbell v. Sundquist*, 926 S.W.2d 250 (Tenn. Ct. App. 1996).

Repeal or invalidation of general sodomy laws since *Bowers*: 2001 Ariz. Legis. Serv. 382 (repealing Ariz. Rev. Stat. §§ 13-1411, 13-1412); 1993 D.C. Law 10-14 (amending D.C. Code § 22-3502 to exclude private consensual adult conduct); 1998 R.I. Pub. Laws 24 (amending R.I. Gen. Laws § 11-10-1 to exclude conduct with other persons); *Powell v. State*, 510 S.E.2d 18 (Ga. 1998); *Williams v. Maryland*, No. 98036031/CL-1059 (Md. Balt. City Cir. Ct. Oct. 15, 1998); *Michigan Org. for Human Rights v. Kelly*, No. 88-815820 CZ (Mich. Cir. Ct. Wayne County July 9, 1990); *Doe v. Ventura*, No. MC 01-489, 2001 WL 543734 (Minn. 4th Dist. May 15, 2001). In Maryland, Michigan, and Minnesota, the States did not appeal the lower court decisions striking down the laws.

At the time of *Bowers*, only one state protected lesbians and gay men from discrimination based on sexual orientation. Today, 13 states and the District of Columbia have anti-discrimination laws that protect lesbian and gay employees.[64] Twenty-two states and the District of Columbia outlaw discrimination in state employment by Executive Order, statute or regulation.[65] At the close of the 107th Congress, 68 Senators (44 Democrats; 23 Republicans; 1 Independent) and 268 Representatives (192 Democrats; 75 Republicans; 1 Independent) had adopted a written policy indicating that sexual orientation is not a factor in employment decisions for their congressional offices.[66] President Clinton issued and President Bush has let stand an Executive Order that bans sexual orientation discrimination in federal executive branch employment. Executive Order No. 13087 (U.S. May 28, 1998).

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[64] Cal. Gov't Code § 12940; Conn. Gen. Stat. § 46a-81c; D.C. Code § 2-1402.11; Haw. Rev. Stat. § 378-2; Md. Code Ann., art. 49B § 16; Mass. Gen. Laws ch. 151B § 4; Minn. Stat. § 363.03; Nev. Rev. Stat. § 613.330; N.H. Rev. Stat. § 354-A:7; N.J. Stat. § 10:5-12; N.Y. Exec. Law § 296; R.I. Gen. Laws § 28-5-7; Vt. Stat. Ann. tit. 21 § 495; Wis. Stat. §§ 111.31-111.36.

[65] Alaska Admin. Order No. 195 (2002); Cal. Gov. Code § 12940; 4 Colo. Code Regs. § 801, R-9-3; Conn. Gen. Stat. § 46a-81c-m; Del. E.O. 10 (2001); Haw. Rev. Stat. § 368-1, 378-1; 1996 Illinois Admin. Order No. 2; Office of the Governor of Indiana, Governor's Policy Statement (Aug. 1, 2001); Md. Regs. Code tit. 1 § 01.1995.19; Mass. Gen. Laws ch. 151B §§ 3-4; Minn. Stat. §§ 363.01-03; Montana Nondiscrimination-EEO Rules, 2.21.4001 et seq. (Dec. 22, 2000); Nev. Rev. Stat. § 281.370; N.H. Rev. Stat. § 354-A:2; N.J. Stat. § 10:5-4, 10:5-12 et seq.; 9 NYCRR §§ 4.28 ,5.33; New Mexico Executive Order No.85-15 (Apr. 1, 1985); Pennsylvania Executive Order no. 2002-3, May 3, 2002; R.I. Gen. Laws §§ 28-5-3, 28-5-7; Vt. Stat. Ann. tit. 3 § 963; *id.* tit. 21 § 495; Wash. Admin. Code § 356-09-020; Washington Executive Order 85-09; Wis. Stat. § 230.18; D.C. Code § 2-1402.31.

[66] Human Rights Campaign, Congressional Scorecard 107th Congress (2002) (available at www.hrc.org/congress/107/scorecard.pdf).

At the time of *Bowers*, no state employer offered domestic-partner health benefits. Today, nine States and the District of Columbia offer such benefits.[67] In addition, at least 129 cities, counties and quasi-governmental agencies (such as public transit systems and school districts) provide domestic-partner benefits for their employees.[68] Nine cities or counties have passed equal benefits ordinances that require city or county contractors to offer the same benefits to domestic partners as they offer to spouses.[69] After the September 11 terrorist attacks, New York Governor George Pataki issued an Executive Order granting surviving partners of gay victims of the attacks the same benefits from the State's Crime Victims Board as spouses. *See* Executive Order No.

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[67] In 1994, Vermont became the first state to offer benefits to same-sex and opposite-sex couples. New York followed suit in 1994, Oregon in 1998, and Maine, Rhode Island, and Washington state in 2001. California has offered benefits only to same-sex partners since 1999. In 2002, Minnesota also began to offer benefits to same-sex partners, and nine years after having voted to do so, Congress allowed the District of Columbia to use local funding for the administration of a domestic partner registry and health insurance availability program for its employees. *See* Human Rights Campaign, State Governments that Offer Domestic Partner Health Benefits (available at www.hrc.org); Human Rights Campaign Foundation, State of the Workplace 9-15 (2001).

[68] Human Rights Campaign Foundation, The State of the Family: Laws and Legislation Affecting Gay, Lesbian, Bisexual and Transgender Families 14 (2002).

[69] In 1996, the City of San Francisco passed the nation's first equal benefits ordinance, requiring employers that contract with the city government to offer the same benefits to employees' domestic partners as they offer to their legal spouses. S.F. Admin. Code § 12B.1(b). Since then, the following jurisdictions have passed similar laws: Los Angeles, L.A. Admin. Code § 10.8.2.1; Seattle, Seattle Mun. Code § 119748; Berkeley, Berkeley Mun. Code 13.29.010; Oakland, California, Oakland Mun. Code ch. 2.32; San Mateo County, California, San Mateo County Ord. No. 2.93.020; Tumwater, Washington, Tumwater Mun. Code 02000-028; and Minneapolis, Minnesota, as yet unchaptered. *See generally* Olson, *Minneapolis Requires Contractors to Provide Partner Benefits*, Minneapolis Star Tribune, Dec. 14, 2002.

113.30, October 10, 2001 (New York). The American Red Cross issued written guidelines making same-sex survivors eligible for September 11 relief assistance, becoming the first national relief agency to provide detailed policies on how to respect same-sex relationships when distributing disaster-related assistance.[70]

At the time of *Bowers*, no state had enacted a hate-crimes law that included sexual orientation. Today, 28 states and the District of Columbia have such laws.[71] In 1990, Congress enacted the Hate Crimes Statistics Act, mandating that the federal government collect national hate-crime statistics, and defining "hate crimes" as crimes that "manifest evidence of prejudice based on race, religion, disability, *sexual orientation*, or ethnicity." *See* 28 U.S.C. § 534 (emphasis added). In 1994, Congress enacted the Hate Crimes Sentencing Enhancement Act, directing the U.S. Sentencing Commission to provide a sentencing enhancement of "not less than 3 offense levels" for any offense determined by the jury to be a "hate crime," defined to include a crime motivated by, *inter alia*, "the actual or perceived . . . sexual orientation of any person." *See id.* § 994. In 2002, the Justice Department for

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[70] Gross, *U.S. Fund for Tower Victims Will Aid Some Gay Partners*, N.Y. Times, May 30, 2002, at A1.

[71] Ariz. Rev. Stat. § 41-1750; Cal Penal Code § 422.75; Conn. Gen. Stat. §§ 53a - 181j – l; Del. Code tit. 11 § 1304; D.C. Code §§ 22-3701 - 3702 & 22-3704; Fla. Stat. § 775.085; Haw. Rev. Stat. § 846-51; 720 Ill. Comp. Stat. 5/12-7.1; Iowa Code § 729A.1-2; Kan. Stat. Ann. Supp. § 21-4716 (2002); Ky. Rev. Stat. § 532.031; La. Rev. Stat. § 14:107.2; 17-A Me. Rev. Stat. § 1151; Mass. Gen. Laws ch. 265 § 39; Minn. Stat. § 611A.79; Mo. Rev. Stat. § 557.035; Neb. Rev. Stat. § 28-111; Nev. Rev. Stat. § 41.690; N.H. Rev. Stat. §§ 651:6 & 21:49; N.J. Stat. § 2C:16-1; N.Y. Penal Law §§ 485.00-05 & 240.30 - 240-31; N.Y. C.P.L.R. § 200.50; Or. Rev. Stat. §§ 166.165 & 181.550; Act. of Dec. 3, 2002, H.B. 1493 (Pa.); R.I. Gen. Laws § 12-19-38; Tenn. Code Ann. § 40-35-114; Tex. Code Crim. Proc. art. 42.014 (2002); Tex. Penal Code § 12.47 (2002); Vt. Stat. Ann. tit. 13 § 1455; Wash. Rev. Code § 9A.36.080; Wis. Stat. § 939.645.

the first time invoked the federal hate crimes sentencing enhancement to charge a person with a hate crime based on sexual orientation. The Department indicted Darrell David Rice for the 1996 slaying of two female hikers in a national park in Virginia, alleging that "the defendant hated women and lesbians and that hatred was a motive for his killing."[72] The Department sought increased punishment in part because the defendant, according to his statement, "hate[d] gays" and believed his victims "deserved to die because they were lesbian whores."[73]

At the time of *Bowers*, no state explicitly prohibited anti-gay harassment in schools. Today, eight States and the District of Columbia have laws prohibiting such harassment.[74] A growing number of schools and school districts also have forbidden anti-gay harassment.[75] Gay-Straight Alliances – student-led clubs organized to make schools welcoming and safe for gay students – have formed in thousands of schools throughout the country.[76]

Laws relating to family relationships have also changed significantly since the time of *Bowers*. Vermont now permits same-sex couples to obtain civil union licenses; five additional states, the District of Columbia, and 41 cities and counties have domestic partnership registries that permit gay and lesbian couples to publicly register and declare their

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[72] Masters, *Gay Bias Charged in Deaths*, Wash. Post, April 11, 2002, at A1.

[73] Glod, *Suspect Pleads Not Guilty in Hikers' Deaths*, Wash. Post, April 26, 2002, at B2.

[74] Cal. Educ. Code § 220; Conn. Gen. Stat. § 10-15c; Mass. Gen. Laws ch. 76 § 5; Minn. Stat. § 363.03; 2002 N.J. Sess. Law Serv. Ch. 83; Vt. Stat. Ann. tit. 16 § 11; 2002 Wash. Legis. Serv. ch. 207.

[75] Tuller, A *New Dimension in Snapshot of Gay Teenagers*, N.Y. Times, Dec. 24, 2002, at F7.

[76] Nationally, 1,601 Gay-Straight Alliances have registered with the Gay, Lesbian, Straight Education Network. *Student and GSA Club Directory* (available at www.glsen.org/templates/student).

commitment.[77] Adoption laws have also changed.[78] Every state except Florida now has a nondiscriminatory adoption statute that permits gay men and lesbians to be considered as adoptive parents. Approximately half the states have approved second-parent adoptions – which permit a second parent to adopt a child in a manner analogous to stepparent adoptions – for same-sex couples who are jointly raising their children.[79] And a majority of states have now abandoned *per se* rules against gay parents in post-divorce custody disputes, instead demanding evidence of harm before a parent's sexual orientation will affect custody or visitation decisions.[80]

2. The private sector has changed as well. In 1982, the first employer offered domestic partner benefits to its lesbian and gay employees.[81] By 1990, that number reached almost two dozen; today, it has jumped to at least 4,446. In 2002, more than 30 percent of Fortune 500 and over half of Fortune 50 companies offered domestic-partner health insur-

[77] State of the Family, *supra* note 68, at 14 (the five states are California, Connecticut, Maine, Oregon, and Washington; Hawaii also has a similar law); van der Meide, NGLTF, Legislating Equality: A Review of Laws Affecting Gay, Lesbian, Bisexual, and Transgendered People in the United States 7.

[78] Organizations including the American Academy of Pediatrics, the American Psychological Association, the Child Welfare League of America, and the North American Council on Adoptable Children have all spoken out in favor of allowing gay men and lesbians to adopt, *see* Human Rights Campaign Foundation, *Parenting* (available at www.hrc.org/familynet), and the American Academy of Pediatrics has issued a policy statement supporting second-parent adoptions for same-sex parents, *see* State of the Family, *supra* note 68, at 23.

[79] *See* Human Rights Campaign Foundation, *Second-Parent Adoption* (available at www.hrc.org/familynet).

[80] *See* Rubenstein, *supra*, at 810-811; Reiss et al., 1 Georgetown J. Gender & Law 383, 392-97 (2000).

[81] Seise & Raimondi, Note, *Employment Benefits: Will Your Significant Other Be Covered?*, 17 Hofstra Lab. & Emp. L.J. 357, 376 (2000).

ance, and more than 2,100 employers – including businesses, unions, colleges and universities and state and local governments – include sexual orientation in their equal employment opportunity policies.[82]

3. Changes in public and private sector policies toward gay men and lesbians reflect a dramatic shift in social attitudes. In a November 2001 survey of opinions about homosexuality by the Kaiser Family Foundation, 76 percent of respondents said they "completely agree[d]" that society should not place *any* restrictions on sex between consenting adults in the privacy of their own homes.[83] Support for lesbian and gay "equal rights in terms of job opportunities" has grown to 85 percent in 2001, according to a Gallup Poll trend.[84] Americans support sexual orientation nondiscrimination laws (and not just the principle of nondiscrimination) by a two to one margin.[85] And a national study of registered voters found that 78 percent of respondents believed that the issue of gay and lesbian adoption should be decided on a case-by-case basis rather than based solely on sexual orientation, more than half opposed laws preventing gay people from adopting children, and almost two-thirds opposed making joint adoption for gay couples illegal.[86]

Changing social attitudes are reflected in ways other than poll numbers. The broadly emerging acceptance of homo-

[82] HRC Worknet Report, The State of the Workplace for Lesbian, Gay, Bisexual and Transgender Americans: A Semiannual Snapshot (2002).

[83] Henry J. Kaiser Family Foundation, Inside-Out: A Report on the Experiences of Lesbians, Gays and Bisexuals in America and the Public's Views on Issues and Policies Related to Sexual Orientation, Nov. 11, 2001 (available at www.kff.org).

[84] Wagner, *Poll Track for June 9, 2001*, Nat'l J., June 9, 2002.

[85] Yang, NGLTF Policy Inst., The 2000 National Election Study and Gay and Lesbian Rights: Support for Equality Grows (2001).

[86] Penn & Whitman, Human Rights Campaign, National Survey on Gay Family Issues Will Help Inform the Debate 2 (1997).

sexuality in official doctrines of many religions in the past few decades, for example, reflects solemn and profound social progress for gay people. Numerous religious institutions now squarely affirm full and equal civil rights for gay people.[87] Many formally condemn discrimination on the basis of sexual orientation and even call for legal protections against such discrimination.[88] A growing number of religions recognize and celebrate same-sex unions,[89] a practice virtually unknown twenty years ago.

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[87] Alliance of Baptists, Rep. of the Task Force on Human Sexuality, Mar. 2001 (available at www.allianceofbaptists.org); American Friends Service Comm. (Quakers) Bd. of Dirs., A Concern about Sexual and Gender Identity, Nov. 1999 (available at www.afsc.org); Episcopal Church, General Conv., Resolutions 1976-A071, 1982-B061 & 1994-C019 (available at www.episcopalarchives.org); Evangelical Lutheran Church in Am., Church Council Action CC.93.3.37 (1993) (available at www.elca.org); The Reformed Church in Am., *Homosexuality: A Biblical and Theological Appraisal* (1978), *reprinted in* The Churches Speak on: Homosexuality 172 (J. Gordon Melton ed. 1991); United Church of Christ, Tenth Gen. Synod, *Pronouncement on Civil Liberties Without Discrim. Related to Affectional or Sexual Preferences* (1975), *reprinted in* Churches Speak, *supra*, at 205-07; United Methodist Church, *Statement on Social Prins.* (1988), *reprinted in* Churches Speak, *supra*, at 242; UMC, The Book of Discipline of The United Methodist Church 66H (2000) (available at www.umc-gbcs.org); U.S. Catholic Bishops' Statement on Marriage and Family (2002) (available at www.usccb.org/laity/always.htm).

[88] *E.g.*, Catechism of the Catholic Church 2357-59 (1994) (available at www.vatican.va/archive/catechism/p3s2c2a6.htm); Cent. Conf. of Am. Rabbis, *Ad Hoc Comm. on Human Sexuality* (June 1998) (available at ccarnet.org/hs.html); Church of the Brethren, *Human Sexuality from a Christian Perspective* (1983), *reprinted in* Churches Speak, *supra*, at 86-87; Presbyterian Church, Mins. of the 199th Gen. Assem. at 776 (1987) (available at www.pcusa.org/101/101-homosexual.htm); *see* UCC, *Equal Employ. Oppor. Pol.* (1980), *reprinted in* Churches Speak, *supra*, at 209.

[89] *E.g.*, Anglican Church of Canada, Decl. of the Synod of the Diocese of New Westminster, June 2002 (available at newwestminster.anglican.org); *Benton v. Presbytery of Hudson River*, PC(USA) Mins. 2000. Pt. I. at 586-89; 1999 Calif. Holy Union Serv. (officiated by 150-plus UMC and ecumenical clergy) (available at www.umaffirm.org);

Indeed, same-sex commitment ceremonies have become so common that the *New York Times* recently began reporting them alongside traditional weddings in a new "Weddings/Celebrations" section. *See Times Will Begin Reporting Gay Couples' Ceremonies*, N.Y. Times, Aug. 18, 2002, at A30 (citing "growing and visible trend in society toward public celebrations of commitment by gay and lesbian couples"). At least 125 other daily newspapers do the same.[90]

Changes in social attitudes are also vividly reflected in popular entertainment. ABC lost $1.6 million in advertising revenue in 1989 when it aired just one episode of the TV series *thirtysomething* suggesting a same-sex encounter.[91] Today one of the most popular sitcoms on television – *Will & Grace* – stars two gay characters,[92] and other programs regularly feature gay characters and themes. Popular movies, too, now regularly include accurate and positive depictions of gay characters and relationships[93] – a rarity just a decade ago. And companies no longer fear including gay themes in their "mainstream" advertising.[94]

Cent. Conf. of Am. Rabbis, *supra*; Episcopal Church, Decl. of Bishop of Diocese of Kan., June 2002 (available at www.ecusa.anglican.org); *see also* Courage to Love: Liturgies for the Lesbian, Gay, Bisexual, and Transgender Commun. (Duncan ed. 2002); Equal Rites: Lesbian and Gay Worship Ceremonies and Celebrations (Cherry & Sherwood eds. 1995); Lesbian and Gay Marriage: Private Commitments, Public Ceremonies (Sherman ed. 1992).

[90] *See* Jonsson, *Paper Will Run Announcement of Gay Couple's Anniversary; Post-Dispatch Joins Others Nationwide in Accepting Ads*, St. Louis Post-Dispatch, Sept. 13, 2002, at C4.

[91] Tropiano, The Prime Time Closet: A History of Gays and Lesbians on TV 129 (2002).

[92] Stilsen, *Red's Got Cred*, Daily Variety, Nov. 21, 2002, Special Section, at A1.

[93] *See, e.g.*, The Hours (2002); Far from Heaven (2002); Billy Elliott (2000); Object of My Affection (1998); My Best Friend's Wedding (1997); Beautiful Thing (1996); Philadelphia (1993).

[94] *See* www.commercialcloset.org.

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Amici believe that *Bowers* was wrong when decided, that the shifts in law and attitude detailed above amplify its flaws, and that the Court should overrule the decision. *Cf. Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 855 (1992) (Court may depart from "old rule" when "related principles of law have so far developed as to have left the old rule no more than a remnant of abandoned doctrine, or [when] the facts have so changed, or come to be seen so differently, as to have robbed the old rule of significant application or justification"). But the Court need not overrule *Bowers*' holding that there is no fundamental right to engage in consensual acts of sodomy for petitioners to prevail. No law can be based merely on moral distaste for persons attracted to those of the same sex. Laws like the Texas Homosexual Conduct Law have no other justification.

CONCLUSION

For the foregoing reasons, the judgment should be reversed.

Respectfully submitted,

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APPENDIX

STATEMENTS OF INTEREST OF AMICI CURIAE

The Human Rights Campaign ("HRC") is America's largest gay and lesbian organization. With more than 450,000 members nationwide, HRC provides a national voice on gay and lesbian issues. HRC effectively lobbies Congress; mobilizes grassroots action in diverse communities; invests strategically to elect a fair-minded Congress; and increases public understanding through innovative education and communication strategies. HRC is a bipartisan organization that works to advance equality based on sexual orientation and gender expression and identity, to ensure that gay, lesbian, bisexual and transgender Americans can be open, honest and safe at home, at work and in the community.

The National Gay and Lesbian Task Force ("NGLTF"), founded in 1973, is a membership organization that works to eliminate prejudice, violence and injusticeagainst gay, lesbian, bisexual and transgender (GLBT) people at the local, state and national level. NGLTF conducts its work through organizing in local communities, working at all levels of government to promote equitable public policies, organizing the largest annual GLBT activist conference, and producing research, policy analysis and strategies to advance equality and greater understanding of GLBT people. Sodomy laws like that in Texas represent a significant threat to GLBT families. They have been used to justify discriminatory interpretations of the law and, in many cases, to separate gay and lesbian parents from their children. NGLTF urges the repeal of all archaic sex laws to respect the privacy and dignity of same-sex couples.

Parents, Families & Friends of Lesbians & Gays, Inc. ("PFLAG") is a national, nonprofit family organization with a grassroots network of over 250,000 members and supporters and almost 500 chapters and affiliates in the United

States. Founded in 1973 by heterosexual mothers and fathers, PFLAG promotes the health and well-being of gay, lesbian, bisexual and transgendered persons, their families, and their friends, through support, education, and advocacy to promote true, full civil rights for all Americans. PFLAG's members and supporters are predominantly heterosexual. The organization seeks to create a society that is healthy and respectful of human diversity –one that encourages all people to achieve their full potential. Part of this mission includes promoting education and understanding about human sexuality and human relationships, which are important to the full development of each individual. Laws such as the Texas Homosexual Conduct Law, which criminalize private, consensual same-sex sexual behavior, prevent lesbians and gays from fully integrating their sexuality into their lives. These laws not only stigmatize those that it deems as criminals, but also cast with opprobrium their parents, families, and friends.

The National Center for Lesbian Rights ("NCLR") is a non-profit legal organization dedicated to achieving full equality for lesbians and their families. Since 1977, NCLR has advocated on behalf of individuals and couples who have been targeted for invidious discrimination because of their sexual orientation, including many who have been harmed by discriminatory sodomy statutes such as the one in this case.

Gay & Lesbian Advocates & Defenders ("GLAD") is a public interest law firm founded in 1978. GLAD's mission is to secure and advocate for the legal rights and interests of lesbians, gay men, and bisexuals, and it does so through litigation and public education in the six New England states. GLAD has considerable legal expertise in the area of civil rights and civil liberties for gay men, lesbians, and bisexuals. Throughout its nearly 25-year history, GLAD has represented individuals who have been charged with violating laws regulating intimate conduct in several states. GLAD

challenged the Massachusetts sodomy law in GLAD v. Reilly, 436 Mass. 132 (2002) as well as the Rhode Island law, State v. Lopes, 660 A.2d 707 (R.I. 1995). GLAD believes these laws impose a stigma on gay people and that persons charged under these laws face a serious risk of harm to their physical safety as well as to their professional livelihood if they are publicly identified.

The Gay & Lesbian Alliance Against Defamation ("GLAAD") is dedicated to promoting and ensuring fair, accurate and inclusive representation of individuals and events in all media as a means of eliminating homophobia and discrimination based on gender identity and sexual orientation. GLAAD is in the business of changing people's hearts and minds through what they see in the media. We know that what people watch on TV or read in their newspaper shapes how they view and treat the gay, lesbian, bisexual and transgender people around them. And we have a responsibility to make sure those images foster awareness, understanding and respect. When media images of our lives are fair, accurate and inclusive, we find ourselves increasingly welcomed into a society that respects difference. When they're not – when stereotypes and misinformation pollute the well of cultural acceptance – we become vulnerable to anti-gay forces working to create a world in which we do not exist. Because of GLAAD's work, gay and lesbian stories and issues are covered in national and local news publications, in film and on television. Negative and imbalanced portrayals of the community have decreased while lesbians and gay men have been increasingly incorporated in nearly every type of media platform. GLAAD continues to provide journalists and media professionals with timely, inclusive and authoritative resources, expanding the representation of our community one story at a time through an effective, forceful mix of advocacy, education and visibility.

Pride At Work, AFL-CIO, is a lesbian, gay, bisexual, transgender (LGBT) organization of working men and

women. Our mission is to educate the LGBT community about the benefits of union membership for LGBT workers and to bring the issues of LGBT workers to the labor movement. With an emphasis on grass roots activism, our members – currently found in 38 states – are involved in struggles against all forms of workplace discrimination, against racism, homophobia, and genderphobia in our communities, and for fair immigration policies, the right to organize, and affirmative action.

People For the American Way Foundation is a nonpartisan citizens' organization established to promote and protect civil and constitutional rights. Founded in 1980 by a group of religious, civic and educational leaders devoted to our nation's heritage of tolerance, pluralism and liberty, People For now has more than 600,000 members and activists across the country, including Texas. People For regularly supports the enactment of civil rights legislation and participates in civil rights litigation, and has been actively involved in efforts nationwide to combat discrimination and promote equal rights, including efforts to protect and advance the civil rights of gay men and lesbians. Consistent with these efforts, People For filed an *amicus curiae* brief in this Court in support of the respondents in *Romer v. Evans*. The instant case is likewise of importance to People For because laws criminalizing consensual, private sexual conduct between two adults of the same gender have no place in our civilized society. Such laws not only violate the privacy and equal protection rights of gay men and lesbians but also have been invoked to justify anti-gay discrimination in many other contexts.

The Anti-Defamation League ("ADL") was founded in 1913 to advance good will and mutual understanding among Americans of all creeds and races, and to secure justice and fair treatment to all citizens alike. It has long been ADL's critical mission to combat all types of prejudice, discriminatory treatment, and hate. ADL has consistently made its

voice heard in the courts as an advocate fighting to guarantee equal treatment of all persons. In particular, ADL has filed *amicus* briefs in this Court in numerous cases urging the unconstitutionality or illegality of discriminatory practices or laws. These include many of the Court's landmark cases in the area of civil rights and equal protection.

The Mexican American Legal Defense and Educational Fund ("MALDEF") is a national civil rights organization established in 1968. Its principal objective is to secure, through litigation, advocacy, and education, the civil rights of Latinos living in the United States. MALDEF has a strong interest in ensuring that the Constitution is interpreted to protect against all forms of irrational discrimination.

The Puerto Rican Legal Defense and Education Fund ("PRLDEF") was founded in 1972 to protect and ensure the civil rights of Puerto Ricans and other Latinos. PRLDEF is committed to the equal protection of the laws for all persons and strongly opposes discrimination against lesbian, gay and bisexual people.

The Society of American Law Teachers ("SALT") is an association of more than 900 individual law faculty members at over 150 law schools. Founded in the early 1970s, SALT's original primary mission was to improve the quality of legal education by making it more responsive to societal concerns. That mission has expanded to include efforts to make the legal profession more inclusive, to make the legal academy more welcoming to historically underrepresented groups, including lesbians, bisexuals, gay men and transgendered individuals, and to extend the power of law to underserved individuals and communities. SALT members teach in all areas of the law and participate regularly in teaching conferences that grapple with how to address issues of race, gender, disability, and sexuality in law school courses. The Court's 1986 decision in *Bowers v. Hardwick*, and its influence on the substantive development of the law in a wide variety of substantive areas has been a central theme at many

of these conferences. SALT believes *Bowers v. Hardwick* should be explicitly overruled and that the Court should clarify its equal protection doctrine as applied to instances of discrimination on the basis of sexual orientation.

Soulforce is a national interfaith movement committed to ending discrimination and inequality perpetuated by religious policies and teachings against gay, lesbian, bisexual and transgender people. As a national organization that works for full equality for all people, regardless of sexual orientation or gender identity, we have an interest in ending sodomy laws.

The Texas Human Rights Foundation (the "Foundation") seeks to end discrimination against lesbian, gay, bisexual, and transgendered persons, and persons with HIV and AIDS, through public education, high impact litigation and legal assistance. The Foundation sponsors a hotline for Texans who have questions about their rights or need legal help because of discrimination. As part of its litigation strategy, the Foundation funded two earlier legal challenges to Texas's same-sex sodomy statute. The Foundation believes that petitioners' case presents the Court with an important opportunity finally to declare same-sex sodomy statutes unconstitutional.

The Lesbian/Gay Rights Lobby of Texas ("LGRL") works toward the elimination of social, legal, and economic discrimination based on sexual orientation through lobbying, education and research directed toward the Texas Legislature and other state governmental agencies. LGRL has advocated for the rights of gay and lesbian Texans on issues such as discrimination in the workplace and in public schools and colleges, hate crime legislation, and increase protections and services for people living with HIV.

The Stonewall Law Association of Greater Houston is a non-profit bar association founded in 1990 for the purpose of promoting human rights and, in particular, the rights of gay,

lesbian, bisexual, and transgender citizens of Texas. Its members include attorneys, law professors, law students, and local lawmakers. Many of the organization's members have been in the position of defending a gay or lesbian client's rights – in the workplace, at school, as parents – against an assault justified on the grounds that "homosexual conduct" is criminal in Texas.

Equality Alabama is a non-profit, statewide, education and advocacy organization dedicated to advancing full equality and civil rights for all the people of Alabama regardless of gender, gender identity, or sexual orientation. The fact that sexual conduct between unmarried persons is illegal in the state of Alabama is regularly used to deny child custody and visitation to LGBT (lesbian, gay, bisexual, or transgendered) parents, to deny employment to LGBT persons in private industry and state government, and to deny counseling for LGBT students in Alabama public schools. These laws are used to deny justice for LGBT citizens of Alabama.

Equality Florida is a non-profit social justice organization committed to ending discrimination based on sexual orientation, race, class and gender. Its primary focus is on issues related to sexual orientation and gender identity and expression. Equality Florida works to achieve workplace fairness and equal opportunity, safe schools for all youth, recognition and respect for our families, and an end to harassment and hate violence in our communities. Our efforts to achieve equal justice are often hampered by those who use antiquated sodomy laws to erroneously claim that to provide protections for lesbian, gay, bisexual and transgender people is to protect criminals, or to condone criminal behavior. As recently as December 2002 the sodomy argument was used to help prevent the passage of a local ordinance in Naples, Florida that would have created a Human Rights Commission which would have provided protections based on sexual orientation, among other categories.

S.A.V.E., Inc. (Safeguarding American Values for Everyone) is an organization founded in Florida in 1995 to use the political process to improve the quality of life for gay, lesbian, bisexual and transgender residents of this country. As residents of a state where sodomy is illegal, we are very interested in the outcome of this case. The ability to have consensual sex with another adult in the privacy of a private home is basic to the quality of our life that our constituents desire for themselves. Even when the law is not enforced, it is a law that appears to exist only to grant second class citizenship for our constituents.

The Community Center ("TCC") in Boise, Idaho seeks to provide inviting, safe and useful facilities to lesbian and gay groups and individuals and to further community cohesion and education. Our volunteer staff publishes Idaho's gay newspaper, "Diversity," and hosts a variety of other functions to accomplish our mission. As the only reference in the Boise phone book under "gay," TCC has been a first contact point for the lesbian and gay community in Southwest Idaho for 19 years. We are a gateway for those searching for a place to belong. Our interest in this case stems from concern about how the state government uses Idaho's "crimes against nature" law. No consistent or equal enforcement of it is evident. The state wields the act selectively, to stifle meaningful discussion of gay issues. For example, in 2000, PBS aired "It's Elementary," a documentary showing positive images of gays and lesbians. In response, the state legislature nearly eliminated all funding for PBS, using the crimes against nature law as justification by claiming PBS had advocated unlawful behavior. TCC's mission of creating community cohesion has been hobbled by the law; gays and lesbians fear what the state can do to them under the law, including possible life in prison.

Your Family, Friends, and Neighbors, Inc. ("YFFN") is a nonprofit, 501(c)(3) grass roots organizing corporation that promotes respect, understanding, and acceptance for lesbian,

gay, bisexual and transgender people. YFFN provides a voice in Idaho for gay, lesbian, bisexual, and transgendered human rights issues by exposing and reducing anti-gay hatred and violence. YFFN also opposes bigotry, violence, and discrimination against all persons. Participation in YFFN is open to all persons dedicated to developing recognition of the diversity inherent in our community, and to those who oppose organized discriminatory activities.

The Kansas Unity and Pride Alliance, Inc., is a nonprofit organization founded in 1999. It was founded on the basis that GLBT citizens in the state of Kansas deserve the same rights, privileges and responsibilities as their heterosexual counterparts. Through networking efforts with GLBT organizations and individuals from Topeka, Lawrence, Manhattan, Emporia, Wichita, Salina, and Hays, the Kansas Unity & Pride Alliance is becoming Kansas' only statewide GLBT advocacy organization working for the equal rights of all citizens. The Kansas sodomy laws have been used against us as a primary argument to exclude GLBT persons from anti-discrimination ordinances. Most recently this was the case in September of 2002 when the Topeka City Council defeated an expansion of the anti-discrimination ordinance by a 5 to 4 vote.

The Louisiana Electorate of Gays and Lesbians is a nonprofit organization formed primarily for the purpose of education on issues affecting the gay, lesbian, bisexual and transgender community. We have been the lead plaintiff in a recent attempt to overturn Louisiana's sodomy law that has been ongoing for the past seven years. Our work had resulted in an injunction preventing the enforcement of the statute as applied to consenting adults in private, but unfortunately that injunction was overturned. The sodomy law permeates all of our work and inhibits our efforts to educate the Louisiana legislature on issues of basic fairness to gay and lesbian citizens.

Equality Mississippi is a non-profit bar association founded in 2000 to conduct public policy research and further public education on the social, economic and health issues affecting lesbian, gay, bisexual and transgender (LGBT) Mississippians, and to promote and protect the equal rights of all LGBT Mississippians. We are often in the position of defending a gay or lesbian Mississippians' rights –in the workplace, at school, as parents –against an assault justified on the grounds that "unnatural intercourse" is criminal in Mississippi.

PROMO is a statewide civil rights organization with over 500 members that supports the Personal Rights of Missourians, especially civil rights for lesbians, gay men, bisexuals, and transgendered persons. PROMO was founded in 1986 as the Privacy Rights Education Project (PREP), in response to *Bowers v. Hardwick*. PROMO believes that our society is dedicated to individual liberty, pluralism, and the experience of diversity. We support the right of individuals to conduct their personal lives free from unreasonable governmental restrictions and intrusions. Since 1986, the organization has sought passage of legislation to repeal that portion of Missouri's sexual misconduct law that criminalizes sexual relations between consenting adults of the same sex. PROMO opposes laws that treat sexual relations between same-sex couples differently than sexual relations between persons of the opposite sex.

The North Carolina Gay and Lesbian Attorneys ("NC-GALA") is a non-profit bar association founded in 1994 to establish a network of attorneys and allied legal professionals who support the goal of achieving legal equality for North Carolina's gay, lesbian, bisexual and transgender citizens. NC-GALA activities include publishing a legal guide to North Carolina law, maintaining a legal referral network, conducting legal education seminars for attorneys and providing information and resources to the community. North Carolina still has a crime against nature statute that applies to

all citizens in North Carolina who are not married. Many NC-GALA members have handled cases in which the existence of this statute has had a detrimental effect on gay and lesbian clients in non-criminal areas such as custody of children, denial of professional licensing, and challenges to domestic partner benefits provided by local governments.

The Cimarron Alliance Foundation of Oklahoma is a non-profit 501(c)(3) educational foundation founded in 1997 for the purpose of supporting educational efforts that increase personal self-esteem, promote public enlightenment and advance equality for Oklahoma gays and lesbians. Many of our foundations colleagues and supporters have been in the position of defending gay and lesbian rights at many levels.

The South Carolina Gay and Lesbian Pride Movement is a (c)4 non-profit organization, which was founded in 1989 to educate our communities on gay and lesbian issues, to celebrate gay and lesbian lives, and to seek equal protection and opportunities for gay, lesbian, bisexual, and transgender South Carolinians. With our allied (c)3 non-profit foundation, the Carolina Rainbow Family Coalition, we run a Gay and Lesbian Community Center in Columbia, which offers educational and support programming. GLPM is a founding member of the South Carolina Equality Coalition, which is working to secure civil and human rights for GLBT South Carolinians. Through our Center hotline, we frequently refer people to attorneys, counselors, and other professionals when they face discrimination or stigmatization. In our advocacy on behalf of GLBT citizens in the state capitol, we repeatedly fight discriminatory legislation (most recently laws on adoption and employment policies), much of it justified by appeals to our archaic "buggery" law, which criminalizes same-sex relations and equates such relations with bestiality. Though rarely enforced, this law is repeatedly used in our state to justify discriminatory practices and climate. For example, last year when the University of South Carolina

sought to include sexual orientation in its non-discrimination policy, Lt. Governor Bob Peeler and other elected officials cited the law in their opposition to inclusion, using the law to justify continued institutional and employment discrimination.

Alliance For Full Acceptance is a non-profit organization founded in 1998 to eliminate prejudice and secure social justice and civil rights for gay, lesbian, bisexual and transgender people through education and information in South Carolina and the Southeast. Our membership includes gay, lesbian, bisexual, transgender and heterosexual persons. Our educational and media efforts inform the public sector where discrimination exists, and we provide the tools to prevent it before it occurs. Our work with policy makers/community leaders for equal treatment under the law is repeatedly hindered by state law that criminalizes homosexual conduct between consenting adults.

The Gay and Lesbian Community Center of Utah ("The Center") is a non-profit association founded in 1992 to be the information and networking center for gay, lesbian, bisexual and transgendered ("GLBT") persons. It is the primary organization in Utah serving the greater GLBT community. The Center also sponsors, and provides meeting space for, numerous programs, including Gay and Lesbian Parents of Utah. Utah has a sodomy statute, which has been used by the legislature and opponents of gay adoption to justify the Utah prohibition against adoption by cohabiting gay people in Utah.

Equality Virginia ("EV") is Virginia's state-wide gay/lesbian/bisexual/transgendered ("GLBT") advocacy organization seeking equality for all Virginians. EV seeks to eliminate discrimination against the GLBT community through lobbying the Virginia General Assembly and other government agencies, and by conducting public education campaigns concerning issues impacting Virginia's GLBT community. For more than ten years one of EV's top priori-

ties has been the repeal of the Virginia Crimes Against Nature Act, which renders criminal private, consensual, non-commercial sexual activity between either a heterosexual or same-sex couple. Virginia's sodomy law has long been and is regularly used to justify all sorts of routine discrimination against gay and lesbian Virginians, including: denying them custody and adoption rights; prohibiting them from obtaining state-funded low income housing loans; denying them equal access to healthcare benefits; and prohibiting school systems and local governments from adding sexual orientation to their respective non-discrimination policies. In each of these areas, advocates of discrimination argue that because gays and lesbians, by definition, engage in sodomy – a felony behavior under Virginia law – they are as a group felons and thereby unfit to have any of the aforementioned basic rights enjoyed by all of Virginia's non-gay citizens. EV has argued and will continue to argue that Virginia's sodomy law is unconstitutional because it is a shameful and unwarranted intrusion of the state into the most intimate and private of its citizens' affairs, and that there is no rational basis for this intrusion and no compelling government interest served by this law.